

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

VICTOR C. ROSEBERRY)	
)	
Movant,)	
)	
v.)	Case No. 09-0850-CV-W-HFS
)	
UNITED STATES OF AMERICA)	
)	
Respondent.)	

ORDER

In this proceeding under 28 U.S.C. § 2255 movant seeks a ruling that his prior representation in State Court was ineffective, and thereby he was caused to be indicted and prosecuted in Federal Court. As the Government correctly argues, this proceeding can only address defects in the Federal Case, including constitutionally ineffective assistance of movant's counsel in this court. He does not make such a claim. Any claim of a violation of movant's right to adequate representation in State Court could only be brought under 28 U.S.C. § 2254, which would be untimely.

The Government also submits that under his plea agreement here movant has waived his right to seek relief.

For reasons noted, and for reasons stated in the Government's brief, the motion for Federal relief (ECF doc. 1) is without merit and will be denied. SO ORDERED.¹ No certificate of appealability will be issued.

/s/ Howard F. Sachs
HOWARD F. SACHS

¹Movant's citation of a district court case in which there was consideration of State Court ineffectiveness of counsel is not on point, because it involved the status of a pending Federal case. This is a closed case, subject to consideration under Section 2255 if at all.

UNITED STATES DISTRICT JUDGE

November 18, 2010

Kansas City, Missouri